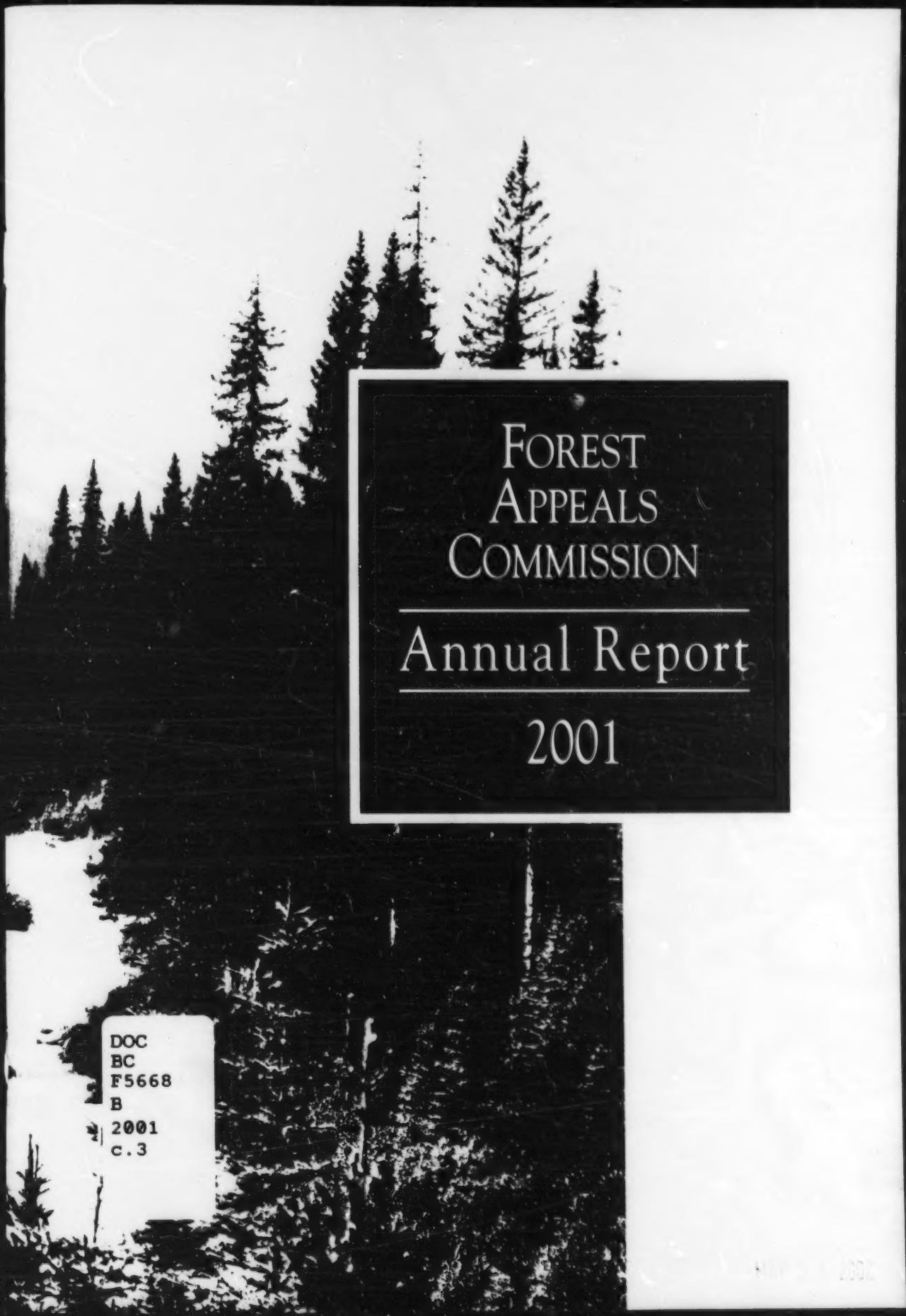

Forest Appeals Commission

Annual Report

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Forest Appeals Commission

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The Honourable Michael de Jong
Minister of Forests
Parliament Buildings
Victoria, British Columbia
V8V 1X4

The Honourable Joyce Murray
Minister of Water, Land and Air Protection
Parliament Buildings
Victoria, British Columbia
V8V 1X4

The Honourable Richard Neufeld
Minister of Energy and Mines
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Ministers:

I respectfully submit herewith the annual report of the Forest Appeals Commission for the period January 1, 2001 to December 31, 2001.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

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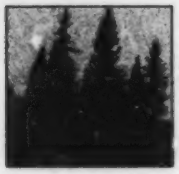

Message from the Chair

The year 2001 saw a small change in the membership of the Commission as three members have left. On behalf of the Commission, I wish to thank Barbara Fisher, Stephen Potter and Howard Saunders for all their hard work and the significant contributions they have made to the Commission. Their time and dedication is greatly appreciated and I wish them well in their future endeavours.

One new member was appointed to the Commission and I would like to welcome Rita Bowry to the Commission.

In the latter half of 2001, the Commission was engaged in a comprehensive review of its mandate. In July 2001, the Attorney General initiated the Administrative Justice Project for the purpose of reviewing the province's system of administrative justice. The Project's outcomes are expected to foster greater public accountability and transparency, to enhance fairness and impartiality in decision-making, and to facilitate public access, public service excellence, and professionalism. The Project is also responsible for facilitating a Core Services Review of more than 60 administrative justice agencies in the province, including the Commission. As part of the government's New Era commitments, the Core Services Review consists of a two-phase review that poses fundamental questions about the nature, quality, and timeliness of the services that administrative justice agencies offer to the public. Phase one of the review involves a mandate review, and phase two involves a service delivery review.

In Fall 2001, the Commission conducted a review of its mandate, and reported its findings and recommendations to the Administrative Justice Project. In its report, the Commission described how it intends to focus its mandates and programs over the next 5 years in light of the government's New Era commitments. In particular, the Commission addressed whether it serves a compelling public interest, provides its services in an affordable manner, and operates in a field where there is a legitimate and essential role for the public sector. The Commission's recommendations are summarized in the "Evaluations and Recommendations" section of this annual report.

In November 2001, the Commission's findings and recommendations were presented to the government's Core Services Review and Deregulation Task Force. The government released its conclusions on phase one of the review in February 2002. The Commission is now conducting phase two of the review.

Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Forest Practices Code of British Columbia Act* (the "*Code*") which came into effect on June 15, 1995. The Commission hears appeals from decisions made under the *Code*, and, as of April 1999, appeals from decisions made under the *Forest Act* and the *Range Act*. The Commission is also required to make recommendations to the Lieutenant Governor in Council (Cabinet) about review and appeal procedures under these statutes.

This is the seventh annual report of the Forest Appeals Commission. The information contained in this annual report covers the twelve-month period from January 1, 2001 to December 31, 2001.

This report describes the structure and function of the Commission and how the appeal process operates. As required by the *Administrative Review and Appeal Procedure Regulation*, this report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period;
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to the *Code*, the *Forest Act*, and the *Range Act* and their regulations respecting reviews and appeals.

Finally, summaries of appeals filed and the decisions made by the Commission during the report period are provided, legislative amendments affecting the Commission are described, and relevant sections of the *Code*, the *Forest Act*, the *Range Act*, and the *Administrative Review and Appeal Procedure Regulation* are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the internet, and at the following libraries:

- Legislative Library
- Library serving the Ministry of Water, Land and Air Protection and the Ministry of Sustainable Resource Management
- Ministry of Forests Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Information about the Forest Appeals Commission is available from the Forest Appeals Commission office, local offices of the Ministry of Forests, selected libraries and on the internet.

More detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual which can be obtained from the Commission office or viewed on the internet. Also, please feel free to contact the office with any questions, or for additional copies of this report. The Commission can be reached at:

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Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Website address:
www.fac.gov.bc.ca

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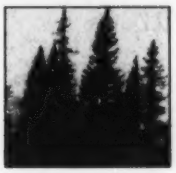


The Commission

The Forest Appeals Commission is an independent agency which provides a forum to appeal certain decisions made by government officials under the *Code*, the *Forest Act* and the *Range Act*. The Commission is also responsible for providing Cabinet with an evaluation of the appeal and review processes, and with recommendations for amendments to the *Code*, the *Forest Act*, the *Range Act*, and the regulations respecting reviews and appeals.

Commission Membership

Commission members are appointed by Cabinet. Their appointments may be for a term of up to three years.

Members of the Commission represent diverse business and technical experience and hold a wide variety of perspectives. Commission membership consists of a full-time chair, a part-time vice-chair and a number of part-time members.

For this report period the Commission consisted of the following members:

MEMBER	FROM
Alan Andison, Chair	Victoria
Rita Bowry (from March 21, 2001)	Dawson Creek
Gerry Burch, Vice-chair	Vancouver
Bruce Devitt	Victoria
Kristen Eirikson	Victoria
Barbara Fisher (to March 21, 2001)	Vancouver
James Hackett	Nanaimo
Jack Krantz	Prince George
Jeanette Leitch	Vancouver
Katherine Lewis	Prince George
Patricia Marchak	Vancouver
Brenda Milbrath	Victoria
David Ormerod	Victoria
Stephen Potter (to March 21, 2001)	North Vancouver
Howard Saunders (to March 21, 2001)	Vancouver
Lorraine Shore	Vancouver
Geza Toth	Vernon
David Walkem	Spences Bridge

Administrative Law

Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that old ones were. The Commission is governed by the principles of administrative law and, as such, must treat all of the parties involved in a hearing fairly, giving each party a chance to explain its position.

The Commission Office

The Commission office staffs nine full-time employees reporting to a General Counsel/Executive Director and the Chair. The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board.

The Environmental Appeal Board is an independent tribunal which hears appeals from administrative decisions made under six statutes: the *Pesticide Control Act*, the *Waste Management Act*, the *Water Act*, the *Wildlife Act*, the *Commercial River Rafting Safety Act*, and the *Health Act*.

Each of the tribunals sharing the office operates completely independently of one another. Supporting two tribunals through one administrative office gives them access to greater resources while, at the same time, cutting down on bureaucracy and costs. In this way, expertise can be shared, and work can be done more efficiently.

Commission Resources

The fiscal 2001/2002 budget for the Forest Appeals Commission was $332,000.

The fiscal 2001/2002 budget for the shared office and staff was $1,153,000.

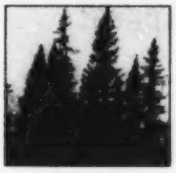
Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Information provided by one party must also be provided to all other parties to the appeal. Further, the hearings are open to the public.

If information is requested by a member of the public regarding an appeal, that information may be disclosed. The Commission is subject to section 163 of the *Code*, which deals with confidentiality and disclosure, and the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act.

Unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act* it will be disclosed.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.



The Appeal Process

Appeals Under the *Forest Practices Code of British Columbia Act*

Not all determinations made under the *Code* can be appealed to the Commission. The *Code* specifies that only certain types of determinations are appealable. These include the following:

- orders to abate or remove a fire hazard;
- determinations regarding fire control or suppression;
- orders regarding unauthorized construction or occupation of a building in a Provincial forest;
- orders regarding the unauthorized storage of hay on a Crown range, or range development;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- orders relating to the control of insects, disease, etc.;
- penalties for contravention of the *Code*, regulations, standards or an operational plan;
- remediation orders and stop work orders; and,
- notices of determination that a person contributed to fire.

These types of determinations cannot be appealed to the Commission unless they have first been reviewed by a reviewer. The review of certain specified determinations may be initiated by the Forest Practices Board or by a person subject to the determination, or both. The Forest Practices Board alone may request a review regarding approval or amendment of a forest development plan or range use plan. The Forest Practices Board may also request a review of a failure to make a determination in certain instances, and if the reviewer makes a determination where there was not one previously, then that new decision may also be appealed to the Commission. Further information regarding the review process may be obtained from the local offices of the Ministry of Forests or the Ministry of Water, Land and Air Protection.

Appeals Under the *Forest Act*

Appealable decisions under the *Forest Act* are set out in section 146 of the *Act* and include certain determinations, orders and decisions made by district or regional managers, employees of the Ministry of Forests, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester may be appealed to the Commission without prior

review. However, determinations, orders or decisions made by a district or regional manager, or employee of the Ministry, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals Under the *Range Act*

The following determinations, orders and decisions under the *Range Act* are appealable to the Commission:

- determinations, orders and decisions by a forest officer or district manager relating to the suspension of all or some of the rights granted under a licence or permit;
- determinations, orders and decisions by a district manager relating to the reinstatement of suspended rights; and,
- determinations, orders and decisions by a district manager relating to the cancellation of suspended rights or the cancellation of a licence or permit where rights were under suspension.

These determinations, orders or decisions cannot be appealed to the Commission unless they have first been reviewed by a reviewer. If the person subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Further information regarding the review processes under the *Forest Act* and the *Range Act* may be obtained from the local Ministry of Forests' offices.

Commencing an Appeal

Notice of Appeal

To commence an appeal, an appellant must prepare a Notice of Appeal and deliver it to the Forest Appeals Commission office within three weeks of the date the review decision is served on the person. The Notice of Appeal must contain the name and address of the appellant, the reasons why the appellant objects to the review decision (the grounds for appeal), and the type of order the appellant is seeking from the Commission. The Notice of Appeal should also include the name and mailing address of the government officials responsible for the original determination and the review decision. In some cases, the review decision must be provided.

If the Commission does not receive the Notice of Appeal within three weeks of the review decision, the appellant will lose the right to appeal. However, the Chair, or a member of the Commission, may extend the deadline either before or after the time limit expires.

If the Notice of Appeal is missing any of the required information, the Commission will notify the appellant of the deficiencies. The Commission may refrain from taking any action on an appeal until the Notice is complete and any deficiencies are corrected.

Once a Notice of Appeal is accepted as complete, the Commission will notify the office of the official who made the determination, and the review decision being appealed. A representative of the Government of B.C. will be the respondent in the appeal.

Filing An Appeal

An appeal can be commenced under the *Code* by:

The person who was the subject of a decision

■

The Forest Practices Board

Appealable decisions under the *Code* are:

Administrative decisions that have undergone review by a reviewer

■

Review decision where there was a failure to make an administrative decision (can only be commenced by the Forest Practices Board)

An appeal can be commenced under the *Forest Act* or *Range Act* by:

The person in respect of whom a determination, order or decision was made

■

The person in respect of whose agreement the determination, order or decision was made

Appealable decisions under the *Forest Act* or *Range Act* are:

Administrative decisions by a district or regional manager, or by employees of the Ministry, that have undergone review by a reviewer

Administrative decisions by the Chief Forester

A Notice of Appeal consists of:

the appellant's name and address, along with the name and address of anyone representing him or her

■

the address to which the appellant wants notice and other official documents to be delivered

■

the name and mailing address of the government official responsible for the review decision

■

the grounds for appeal

■

description of the relief requested
(i.e. what decision the appellant would like the Commission to make)

■

if the appeal is from a determination as varied by the reviewer,
a copy of the review decision must be provided with the Notice of Appeal

Third Party Status

The *Code* provides that, at any stage of an appeal, the Commission may grant third party status to a person who may be affected by the appeal. When the Forest Practices Board is not an appellant, the Commission will add the Board as a party to the appeal at the Board's request.

The *Forest Act* and the *Range Act* provide that only the appellant and the government are parties to appeals under those Acts.

Intervenors

The *Code* enables the Commission to invite or permit a person to participate in a hearing as an intervenor. An intervenor may participate in a hearing to the extent that the Commission allows. The *Forest Act* and the *Range Act* do not provide for intervenor participation.

Persons wishing to take part in an appeal under the *Code* as an intervenor should inform the Commission of their desire, and outline the reasons for their participation in the appeal.

If the Commission allows a person to participate as an intervenor, it will give written notice to the intervenor, and the parties involved in the appeal, specifying the extent to which the intervenor will be permitted to take part in the hearing.

Type of Hearing

The Commission has the authority to conduct a new hearing on a matter before it (i.e. hearing *de novo*).

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. In most cases, the Commission will conduct an oral hearing. However, in some instances the Commission may find it appropriate to order a hearing to proceed by way of written submissions.

Prior to ordering that a hearing be conducted by way of written submissions, the Commission may request input from the parties.

Written Hearing Procedure

If it is determined that the hearing will be by way of written submissions, the Commission will invite all parties and intervenors to provide submissions. The appellant will provide its submissions first. The other parties will have an opportunity to respond to the appellant's submissions when making their own submissions.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Finally, all parties will be given the opportunity to provide closing submissions. Closing submissions should not contain new evidence.

Oral Hearing Procedure

As required by the *Administrative Review and Procedure Regulation*, the Commission will, within 30 days of receiving and accepting an appeal, determine which members will hear the appeal. At that time, the Commission will also set the date, time and location of the hearing. If the appeal is under the *Forest Act* or the *Range Act*, the hearing must be held within 45 days from the time the Commission receives the Notice of Appeal unless the Commission and all parties agree to a period other than 45 days.

When the date for a hearing is set, the parties involved will be notified. If any of the parties to the appeal cannot attend the hearing on the date scheduled, a request may be made to the Commission to change the date.

An oral hearing may be held in the locale closest to the affected parties, at the Commission office in Victoria, a combination of both, or anywhere in the province. The Commission will decide where the hearing will take place on a case by case basis.

Once a hearing is scheduled, the parties will be asked to provide certain materials to the Commission.

Statement of Points

To help identify the main issues to be addressed in an oral hearing, and the arguments that will be presented in support of those issues, all parties to the appeal are requested to provide the Commission, and each of the parties to the appeal, with a written Statement of Points and all relevant documents.

The Commission requires that the appellant submit its Statement of Points and documents at least 30 days prior to the commencement of the hearing. The respondent and all other parties are required to submit their Statements of Points and documents at least 15 days prior to the commencement of the hearing. Each party is to ensure that the Commission, and all other parties to the appeal, receive a copy of their Statement of Points and documents within the set time frames.

The Statement of Points is, essentially, a summary of each party's case. As such, the content of each party's Statement of Points will depend on whether the party is appealing the decision or attempting to uphold the decision being appealed.

The Commission asks that the following information be contained in the respective party's Statement of Points:

(a) The appellant should outline:

  (i) the substance of the appellant's objections to the decision of the respondent;

  (ii) the arguments which the appellant will present at the hearing;

  (iii) any legal authority or precedent supporting the appellant's position; and,

  (iv) the names of the people the appellant intends to call as witnesses at the hearing.

(b) The respondent should outline:

  (i) the substance of the respondent's objections to the appeal;

  (ii) the arguments which the respondent will present at the hearing;

  (iii) any legal authority or precedent supporting the respondent's position; and,

  (iv) the names of the people the respondent intends to call as witnesses at the hearing.

Additional hearing participants that are granted party status or intervenor status are also asked to provide a Statement of Points outlining the above-noted points as may be relevant to that party.

Where a party has not provided the Commission with a Statement of Points by the specified date, the Commission has the authority to order the party to do so.

Pre-hearing Conference

Either before or after the Statements of Points and relevant documents have been exchanged, the Commission, or any of the parties, may request a pre-hearing conference.

Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, to resolve the issues between the parties, and to deal with any preliminary concerns.

A pre-hearing conference will normally involve the spokespersons for the parties, one Commission member and one staff member from the Commission office. It will be less formal than a

hearing and will usually follow an agenda, which is set by the participants. The parties are given an opportunity to resolve the issues themselves giving them more control over the process.

If the issues are resolved, there will be no need for a full hearing. Conversely, it may be that nothing will be agreed upon and the appeal will move to a hearing.

Disclosure of Expert Evidence

The Commission is not bound by the provisions relating to expert evidence in the British Columbia *Evidence Act*. However, the Commission does require that reasonable advance notice of expert evidence be given and that the notice include a brief statement of the expert's qualifications and areas of expertise, the opinion to be given at the hearing, and the facts on which the opinion is based.

Summons

The Commission has the power to summon witnesses to give evidence at a hearing and bring documents related to the hearing.

If a party wants to ensure that an important witness attend the hearing, the party may ask the Commission to issue a summons. The request must be in writing and explain why the summons is required.

The Hearing

A hearing is a more formal process than a pre-hearing conference, and allows the Commission to receive the evidence it uses in making a decision.

In an oral hearing, each party will have a chance to present evidence. Each party will have an opportunity to call witnesses and explain its case to the Commission.

Although hearings before the Commission are less formal than those before a court, some of the hearing procedures are similar to those of a court: witnesses take an oath or make a solemn affirmation, evidence is presented and witnesses may be cross-examined.

Parties to the appeal may have lawyers representing them at the hearing but this is not required. The Commission will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings of the Commission are open to the public.

Rules of Evidence

The rules of evidence used in a hearing are less formal than those used in a court. The Commission has full discretion to receive any information it considers relevant and then will determine what weight to give the evidence.

The Decision

In making its decision, the Commission is required to determine, on a balance of probabilities, what occurred, and to decide between the rights of the parties.

The Commission will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and written hearing, the final decision will be given in writing within a reasonable time following the hearing. Copies of the decision will be given to the parties, the intervenors, and the appropriate minister(s). In an appeal under the *Forest Act* or the *Range Act*, the Commission is required to serve its decision on the parties within 42 days after the conclusion of the hearing.

If a party disagrees with the decision of the Commission, that party may appeal the decision

to the British Columbia Supreme Court. This appeal must be made within 3 weeks of being served with the Commission's decision. A party may only appeal the Commission's decision on a question of law or jurisdiction.

Where a decision is appealed to the Supreme Court, the court may confirm, reverse or vary the decision, or make any order the court considers just in the circumstances.

Costs

The Commission also has the power to award costs. If the Commission finds it is appropriate, it may order that a party or intervenor pay another party or intervenor any or all of the actual costs of the appeal.

Legislative Amendments Affecting the Commission

In March 2001, section 23 of the *Administrative Review and Appeal Procedure Regulation* was amended to require the Commission provide its decision to the parties in an appeal within 42 days after the conclusion of the hearing. Prior to this amendment, the Commission was required to provide its decision within 21 days after the conclusion of the hearing. In addition, section 24 of that *Regulation* was amended to require the Commission to submit its annual report for the preceding year by April 30th. Previously, the Commission was required to submit its annual report by March 31st.

Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission is also required to make recommendations on amendments to the *Code*, *Forest Act* and the *Range Act* and their regulations respecting reviews and appeals.

Overall, the number of appeals filed with the Commission in 2001 was almost half the number filed in 2000, and almost equal the number filed in 1999. Far fewer appeals were filed under the *Forest Act* in 2001 as compared to 2000. In 2001, only one appeal was filed under the *Forest Act*, compared to ten filed in 2000. However, 2001 actually saw a minor increase in the number of appeals filed under the *Code*. There were nine appeals filed under the *Code* in 2001, compared with eight in 2000.

During the report period, the Commission prepared a report for the Administrative Justice Project, a review of the province's administrative justice system. In the Commission's report, it made certain recommendations that merit repeating here.

To promote further efficiencies and a more cost effective means of delivering services the Commission made the following recommendations:

- Consolidate the Commission with the Environmental Appeal Board, and any other agencies with similar mandates and functions, to "form a single tribunal with a unified, flexible appeal process that remains sensitive to the unique features of different Acts and the needs of stakeholders and government agencies;"
- Adapt the mandate, policies and procedures of the consolidated tribunal to accommodate the government's shift towards results-based standards for regulating natural resource developments;
- Adapt the mandate, policies and procedures of the consolidated tribunal to accommodate any new areas where the regulated industry or the public demands a right to appeal government decisions to a tribunal with scientific or technical expertise; and
- Obtain legislative authority to encourage parties to settle appeals through negotiation and mediation.

These changes will ensure that the mandate of the Commission continue to meet a compelling public purpose while reducing overlap and improving efficiency in the appeal process.

Appeals Filed

Appeals filed under the *Code*, the *Forest Act*, and the *Range Act* have been reported separately.

In 2001, ten appeals were filed with the Commission. Nine of these appeals were filed under the *Code*, and one was filed under the *Forest Act*. There were no appeals filed under the *Range Act* in 2001.

Summaries of each of the appeals that were filed are provided below. The status of each of the appeals as of December 31, 2001 is provided after each summary.

Appeals under the *Code*

2001-FOR-001 Rodney Gilbert and Linda Gilbert v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed January 17, 2001

The Gilberts appealed a review decision upholding a determination that Mr. Gilbert had contravened sections 58 and 96(1) of the *Code* by harvesting Crown timber and constructing a road on Crown land without authority, and that Ms. Gilbert contravened section 96(1) of the *Code* by also harvesting Crown timber without authority. Penalties of $100,557.17 were assessed against each of the Appellants.

STATUS: Hearing held March 27–28, 2001
Decision issued April 23, 2001

2001-FOR-002 Forest Practices Board v. Government of British Columbia (Zeidler Forest Industries Ltd., Third Party)

Appeal filed March 7, 2001

The Forest Practices Board filed an appeal against a review decision varying a determination. The review decision upheld the finding that Zeidler Forest Industries Ltd. had contravened sections 64(1)(b) and 64(2) of the *Code* and section 20(c) of the *Forest Road Regulation*, but reduced the penalty from $80,000 to $5,000.

STATUS: Hearing held September 20, 2001
Decision issued January 24, 2002

2001-FOR-003 Lloyd Bentley v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed March 29, 2001

Lloyd Bentley filed an appeal against a review decision varying a determination. The review decision upheld the finding that Mr. Bentley had contravened sections 96(1) and 97(1) of the *Code*, but found that the District Manager erred in the penalty calculation and remitted the issue back to the District Manager for reconsideration with directions.

STATUS: Hearing held October 3–4, 2001
Decision pending

2001-FOR-004 Forest Practices Board v. Government of British Columbia (Chetwynd Forest Industries, a Division of West Fraser Mills Ltd. and D & L Enterprises Ltd., Third Parties)
Appeal filed July 31, 2001

The Forest Practices Board filed an appeal against a review decision upholding a determination that Chetwynd Forest Industries had contravened sections 67(1) and 47(1) of the *Code* and section 24(1) of the *Timber Harvesting Practices Regulation*. The Board appeals on the grounds that D & L Enterprises Ltd. was not given an opportunity to be heard before the decision-makers below.

STATUS: Preliminary hearing on the Commission's jurisdiction concluded December 3, 2001
Decision issued on February 8, 2002

2001-FOR-005 Marvin Ryan v. Government of British Columbia
Appeal filed September 12, 2001

Marvin Ryan filed an appeal against a review decision upholding a determination that he had contravened section 67(2)(d) of the *Code* and should pay a penalty of $1,344.

STATUS: Hearing held February 26, 2002
Decision pending

2001-FOR-006 Takla Development Corporation Ltd. v. Government of British Columbia (Forest Practices Board, Third Party)
Appeal filed October 26, 2001

Takla Development Corporation Ltd. filed an appeal against a review decision varying a determination. The review decision upheld the finding that Takla had contravened section 67(1)(e) of the *Code*, but reduced the penalty from $48,498.69 to $35,919.38.

STATUS: Hearing scheduled for April 17–18, 2002

2001-FOR-007 Tembec Industries Inc. v. Government of British Columbia (Forest Practices Board, Third Party)
Appeal filed November 30, 2001

Tembec Industries Inc. filed an appeal against a review decision upholding a determination that it contravened section 23(g) of the *Timber Harvesting Practices Regulation*.

STATUS: Hearing scheduled for May 28–30, 2002

2001-FOR-008 Suncor Energy Inc. v. Government of British Columbia
Appeal filed December 12, 2001

Suncor Energy Inc. filed an appeal against a review decision varying a determination. The review decision upheld the determination that Suncor contravened section 68(1) of the *Code*, but found that there was no contravention of sections 67(1) and 45(3)(b) of the *Code*.

STATUS: Appeal abandoned on January 15, 2002

2001-FOR-009 Bawnie Robinson on behalf of Harry David Robinson v. Government of British Columbia
Appeal filed December 27, 2001

Bawnie Robinson filed an appeal against a review decision upholding a determination that Harry Robinson contravened sections 96(1) and 67(1) of the *Code* and that a fine of $1,000 was appropriate for the contraventions.

STATUS: Hearing date not confirmed during this report period.

Appeals under the *Forest Act*

2001-FA-001 Valley Tree Services Ltd. v. Government of British Columbia

Appeal filed May 31, 2001

Valley Tree Services Ltd. filed an appeal against a review decision upholding a determination that it failed to comply with an obligation in a Timber Sale Licence and imposing a one-year disqualification period as a small business forest enterprise pursuant to section 78(1) of the *Forest Act*. Valley appealed its disqualification.

STATUS: Hearing held July 12, 2001

Decision issued August 9, 2001

Decisions

January 1, 2001 – December 31, 2001

The following are summaries of decisions rendered by the Forest Appeals Commission during 2001.

The Commission issued ten decisions during 2001, including six under the *Code*, three under the *Forest Act* and one under the *Range Act*. Commission decisions on appeals under the *Code*, the *Forest Act* and the *Range Act* are reported separately.

Appeals under the *Code*

2000-FOR-006 Klaus Orleans v. Government of British Columbia
Decision Date: April 2, 2001
Panel: Lorraine Shore

This was an appeal by Klaus Orleans of a determination by the District Manager, as varied in a review decision. The District Manager found that Mr. Orleans had contravened section 96(1) of the *Code* by harvesting a spruce log from Crown land without authority, and imposed a penalty of $1,824.08. On review, the contravention was confirmed but the penalty was reduced to $1,582.84. Mr. Orleans appealed the contravention and the penalty.

The Commission found that, on a balance of probabilities, Mr. Orleans was responsible for the unauthorized cutting of the Crown timber. While the evidence was circumstantial, it was strong in this case. Mr. Orleans admitted to beachcombing in the relevant area at the relevant time, did not dispute that the seized wood was his property, or that he was in possession of wood that matched the remainder of the log from which wood was cut without authorization. Mr. Orleans provided no credible explanation for how he came into possession of the wood.

Regarding the penalty, the Commission found that, while the gravity of the contravention was relatively minor and not repetitive, it was deliberate and Mr. Orleans continued to deny the contravention. The Commission found that the penalty should remove the economic benefit and act as a deterrent. Accordingly, it was appropriate to impose a penalty that may have exceeded the actual sale price of the logs, but which reflected the average market value of the logs at the time of sale. The penalty, as amended on review, was upheld. The appeal was dismissed.

2000-FOR-008 International Forest Products Limited v. Government of British Columbia
Decision Date: July 4, 2001
Panel: David Ormerod, Patricia Marchak, Brenda Milbrath

This was an appeal by International Forest Products Limited ("Interfor") of a Review Panel decision upholding the District Manager's determination that Interfor had contravened section 51(2)(a) of the *Code* five times by failing to modify

or stop timber harvesting operations in the vicinity of previously unidentified "resource features". The features in question, five culturally modified trees ("CMTs") in one cutblock in the Mid Coast Forest District, were damaged during harvesting operations. Interfor requested that the determination be varied to reflect only a single contravention, and that the penalty be reduced.

The Commission found the *Code* and *Forest Act* are unclear as to whether the five individual CMTs located together in a group should be considered five separate resource features or one cultural resource. After considering the relevant law and policies, the Commission determined that the group of CMTs constituted one resource feature, and that Interfor was responsible for one contravention of the *Code*.

The Commission found that a penalty of $5,000 was appropriate in the circumstances. The appeal was allowed.

2000-FOR-009(a) Forest Practices Board v. Government of British Columbia (Husby Group of Companies, Third Parties) (Council of the Haida Nation, Applicant)
Decision Date: March 20, 2001
Panel: Alan Andison

This was an application by the Council of the Haida Nation to have the Forest Appeals Commission change the location of the hearing of this appeal from Victoria to the Queen Charlotte Islands. The appeal was launched by the Forest Practices Board against the approval of a five-year forest development plan covering lands on the Queen Charlotte Islands. While the Council of the Haida Nation was not a party to the appeal, the Forest Practices Board supported the application; the Husby Group of Companies and the Respondent objected to the proposed change.

The Commission found that the factors weighed in favour of the hearing being held on the Queen Charlotte Islands. The forest development plan at issue in the appeal involves lands on the Queen Charlotte Islands, the persons most affected by this plan reside on the Queen Charlotte Islands, and the Respondent and Husby Group of Companies maintain operations and offices on the Queen Charlotte Islands. The Commission found that the location of the parties' counsel is not a relevant consideration. While persons in other parts of British Columbia may be interested in the hearing, the local public must be given priority over members of the public in the rest of the province. Just as it would be unfair for a hearing involving resource decisions on Vancouver Island to be held on the Queen Charlotte Islands, it would be unfair for such a hearing involving the Queen Charlotte Islands to be held on Vancouver Island.

The application for a change of venue was granted.

2000-FOR-009(b) Forest Practices Board v. Government of British Columbia (Husby Group of Companies, Third Parties) (Council of the Haida Nation, Applicant)
Decision Date: September 7, 2001
Panel: Alan Andison

The Council of the Haida Nation brought an application seeking either party or intervenor status in the Forest Practice Board's appeal of the five-year forest development plan covering lands on the Queen Charlotte Islands.

The Commission considered whether the same legal test should apply to applications for party status and intervenor status. It found that the language of the *Code* clearly distinguishes between parties and intervenors, and the extent to which they may, as a matter of discretion and procedural fairness, be allowed to participate in an appeal

hearing. The Commission concluded that in order to be added as a party under section 131(8), the Commission must be satisfied that substantial rights, such as the personal, pecuniary or property rights of a person, may be affected. However, the threshold for intervenor status is lower, requiring the applicant to show that it has a valid or genuine "interest" in the appeal, and that its participation will assist the Commission.

The Commission concluded that the Council of the Haida Nation failed to establish whether, or how, its people relied on the specific areas covered by the forest development plan or how logging or road building in those areas could affect its people. Further, the Council of the Haida Nation failed to indicate how the Commission's decision in the appeal would affect the Haida people. However, the Commission did find that the Haida people have a genuine interest in the issues under appeal: they have an interest in ensuring that forest development plans covering the Queen Charlotte Islands comply with the *Code*, particularly as they relate to sustainable forest use, wildlife conservation, and meeting the needs of First Nations communities on the Queen Charlotte Islands. Moreover, the Haida have taken an active interest in forestry issues on the Queen Charlotte Islands, and have, for several years, been negotiating with the provincial government with respect to forest management.

Accordingly, the Commission found that that the Council of the Haida Nation has a valid interest in the appeal, and could assist the Commission by providing relevant and unique evidence from one witness, and legal arguments with respect to section 41 of the *Code*. The application for intervenor status was granted. The application for party status was denied.

2001-FOR-001 Rodney Gilbert and Linda Gilbert v. Government of British Columbia (Forest Practices Board, Third Party)
Decision Date: April 23, 2001
Panel: Alan Andison, Katherine Lewis, Brenda Milbrath

This was an appeal by Rodney Gilbert and Linda Gilbert of a Review Panel decision, which confirmed the decision of the District Manager. The District Manager found that Rodney Gilbert contravened the *Code* by harvesting Crown timber and constructing a road on Crown land without authority, and that Linda Gilbert contravened the *Code* by harvesting Crown timber without authority. Penalties of $100,557.17 were assessed against each of the Appellants.

The Appellants did not dispute that unauthorized harvesting of Crown timber occurred. Mr. Gilbert argued that he complied with the *Code* by having the Appellants' property surveyed, and that any contravention of section 96(1) was the sole responsibility of Mr. Colebank, with whom the Appellants had contracted to remove timber from their property.

Pursuant to section 96(3) of the *Code*, the Commission found that the Appellants were responsible for the actions of Mr. Colebank because their arrangement was in the nature of a partnership, he was acting on their behalf, and they benefited from the unauthorized harvesting by receiving a percentage of the money obtained from the sale of the timber.

Mr. Gilbert also disputed the finding that he constructed a road on Crown land. He submitted that the road was pre-existing and that any construction by Mr. Colebank was to traverse a wet area. The Commission found that Mr. Gilbert was responsible for Mr. Colebank's actions, either through the partnership or, alternatively, because

Mr. Colebank acted as Mr. Gilbert's agent. The Commission upheld this finding of a contravention.

The Appellants disputed the determination of the volume of timber harvested from Crown land and the calculation of the penalty. The Appellants argued that all of the timber with their timber mark came from their property alone, and that any Crown timber was either tagged under a different mark or not at all. They also submitted that the estimate of the wood harvested on Crown land was excessive and that the penalty was correspondingly excessive. The Appellants further claimed that the penalty should be reduced because they lost a season of farming due to the "stop work order" issued by the Ministry of Forests. The Commission found that the harvested Crown timber was marked with the Appellants' timber mark.

The Commission found that the penalty assessed fully compensated the Crown for the timber removed, but that the Appellants' compliance with the stop work order should be considered in determining the appropriate penalty. The Commission referred the appeal back to the District Manager to reduce the penalty to reflect the costs incurred by the Appellants due to the stop work order. The appeal was allowed in part.

Appeals under the *Forest Act*

2000-FA-006 Weyerhaeuser Company Limited v. Government of British Columbia
Decision Date: June 4, 2001
Panel: Gerry Burch, Kristen Eirikson, Bruce Devitt

This was an appeal by Weyerhaeuser Company Limited of a review decision upholding the Stumpage Advisory Notices issued by the Regional Appraisal Coordinator with respect to two road permits in the Clearwater Forest District. Weyerhaeuser appealed on the grounds that one of its cutting permits was incorrectly omitted from the stumpage rate calculations for the road permits. The cutting permit was omitted from the calculations because of a delay in issuing a sudden and severe damage reappraisal and an anniversary reappraisal for the cutting permit. Weyerhaeuser sought an order that the reappraised stumpage rate applicable to the omitted cutting permit be included in the stumpage rate calculations for the road permits for the year 2000.

The Commission found that the wording of the Interior Appraisal Manual was ambiguous with respect to whether the Ministry of Forests is responsible for determining whether an anniversary appraisal needs to be conducted. It found no fault with the way the Ministry handled the sudden and severe damage and anniversary reappraisals of the cutting permit, and held that the delay in issuing the reappraisals was not inordinate. The Commission concluded that the Manual did not require the anniversary reappraisal to have been issued in time to be included in the data from which the stumpage rates for the road permit were calculated. However, the Commission concluded that the anniversary date for the cutting permit was January 1, 2000, and that the Ministry should have calculated the stumpage rate applicable to the road permits based on the data available as of January 1, 2000. This would have included the cutting permit in question and resulted in lower stumpage rates applying to the road permits. The appeal was allowed.

2000-FA-007 Kemess Mines Inc. and Royal Oak Mines Ltd. v. Government of British Columbia
Decision Date: October 15, 2001
Panel: Alan Andison

The Ministry of Forests issued stumpage determinations with respect to three licences held by Kemess Mines Inc. and Royal Oak Mines Ltd.

The Appellant requested an appeal of those determinations. By consent of the parties, the Commission ordered that the stumpage rates for the three licences be varied.

2000-FA-010 Laurie Parker v. Government of British Columbia
Decision Date: February 26, 2001
Panel: David Ormerod

This was an appeal by Laurie Parker of the District Manager's decision to suspend Mr. Parker's rights under his woodlot licence. The District Manager suspended Mr. Parker's rights for failing to perform his silviculture obligations under the preharvest silviculture prescriptions for the woodlot licence, and for failure to pay rent. Mr. Parker sought an order from the Commission rescinding the suspension and reinstating his rights under the woodlot licence.

The parties did not dispute that the woodlot was inadequately stocked and that Mr. Parker had not met his silvicultural obligations under the preharvest silviculture prescriptions. Accordingly, the Commission found that section 70(4)(d) of the *Code* was contravened. The Commission found that the regeneration standards the Ministry set for itself were irrelevant as to whether Mr. Parker met his own obligations. Furthermore, under section 79(1)(b) and (c) of the *Forest Act*, Mr. Parker remained liable to perform all obligations imposed under the woodlot licence despite its suspension.

The parties did not dispute that Mr. Parker was in arrears for annual rents at the time of the suspension. Under the *Forest Act*, Mr. Parker was liable only for rent owing before the suspension. By the time of the hearing, Mr. Parker had paid all the rent owing up to the suspension date, and was, therefore, in compliance with section 111 of the *Forest Act*. Contravention of section 111 was, therefore, no longer a ground for continuing the suspension.

The Commission found that, since Mr. Parker was still in contravention of section 70(4)(d) of the *Code*, and a monetary penalty would be ineffective given Mr. Parker's financial situation and his history of non-compliance with silviculture obligations, a suspension continued to be the most appropriate penalty. The appeal was denied.

2001-FA-001 Valley Tree Services Ltd. v. Government of British Columbia
Decision Date: August 9, 2001
Panel: Lorraine Shore

This was an appeal by Valley Tree Services Ltd. ("Valley") of a review decision which confirmed the decision of a District Manager in the Chilliwack Forest District, that Valley failed to perform the obligation in its Timber Sale Licence to harvest timber in a cutblock. The District Manager directed the forfeiture of Valley's security deposit of $1,182.22, and imposed a one-year disqualification period as a small business forest enterprise registrant. Valley sought an order rescinding the imposition of the disqualification period.

Valley argued that the one-year disqualification was excessive. It submitted that it had been unable to commence harvesting due to extenuating market circumstances, and that a six-month disqualification was more appropriate and would be consistent with a previous decision in another District against another operator. Valley argued that it made a genuine effort to harvest the timber, but market prices made it unprofitable to do so.

The Ministry submitted that it based its decision on a District policy, which states that there will be no disqualification period in extenuating circumstances. In the absence of extenuating circumstances, the disqualification period is one-year for a first violation and two-years for a second. In this case, the Ministry determined that there were no extenuating circumstances.

There was no dispute that Valley failed to perform an obligation in the Timber Sale Licence when it failed to harvest the timber. Therefore, the Commission found that a disqualification period was appropriate.

The Commission then considered the appropriateness of the penalty. The Commission found that the one-year disqualification period was somewhat excessive in the circumstances. The Commission varied the decision and substituted an eight-month disqualification period. The appeal was allowed in part.

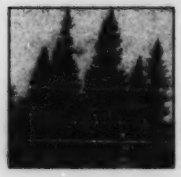
Appeals under the *Range Act*

1999-FOR-06 Rudy and Celia Harfman v. Government of British Columbia
Decision Date: February 1, 2001
Panel: Howard Saunders, Lorraine Shore, Stephen Potter

This was an appeal by Rudy and Celia Harfman of a review decision confirming the District Manager's decision to suspend the Harfmans' right to graze livestock on Crown land and to cancel their grazing licence. The District Manager suspended the Harfmans' grazing rights on the grounds that they had not complied with their Range Use Plan. Their grazing licence was cancelled for failing to comply with terms of the *Code*, grazing licence, and Range Use Plan, and for jeopardizing range health and inconveniencing other range users. The Harfmans sought an order rescinding the suspension and cancellation.

The Harfmans alleged that procedural errors had occurred in the decision-making process below. The Commission agreed with the Review Panel that a typographical error in the licence number did not prejudice the Harfmans, as they knew that it was their licence at issue. The Commission found that the Harfmans had received full disclosure and were allowed to cross-examine witnesses at the hearing before the Commission. Therefore, any defects in the process below were cured by the appeal process, and were insufficient to defeat the decisions below.

The Commission found that the District Manager had sufficient grounds to suspend the Harfmans' grazing rights and to cancel the grazing licence. Given the frequency and continuity of the Harfmans' violations of the Range Use Plan and the *Code*, and Harfmans refusal or inability to change this pattern of conduct, the Commission found that the decision to cancel was appropriate in the circumstances. The appeal was dismissed.



Appeals of Decisions

January 1, 2001 – December 31, 2001

British Columbia Court of Appeal

Thomas Paul v. Forest Appeals Commission, the Attorney General of British Columbia, and the Ministry of Forests (The Council of Forest Industries, Intervenor) (2001 BCCA 411)
Decision Date: June 14, 2001
Court: Mr. Justice Lambert, Mr. Justice Donald, Madam Justice Huddart

This was an appeal by Thomas Paul, an aboriginal Canadian, and the Province of British Columbia, against the Supreme Court decision (*Paul v. British Columbia (Forest Appeals Commission)* (1999), 179 D.L.R. (4th) 351) which found that the Province had lawfully granted the Forest Appeals Commission jurisdiction to adjudicate on Mr. Paul's claim of an aboriginal right to harvest timber in traditional territory.

Mr. Paul applied to the Court of Appeal for an order prohibiting the Commission from hearing an appeal under the *Code* on the question of whether he removed four cedar trees from Crown land in contravention of section 96 of the *Code*. Mr. Paul claimed an aboriginal right to harvest timber in traditional territory, but argued that section 91(24) of the *Constitution Act* precludes the province from enacting legislation which empowers the Commission to directly adjudicate in respect of the existence of aboriginal rights and, in the alternative, if the province can so legislate, it has neither expressly nor impliedly done so. The Province disputed Mr. Paul's claim that it cannot empower a tribunal to adjudicate in respect of the aboriginal right claimed by Mr. Paul, but endorsed his position that the Commission had not been so empowered.

The Court of Appeal considered two issues. First, it considered whether the Province has the constitutional capacity to give the Commission the jurisdiction to decide questions of aboriginal rights and title in the context of deciding appeals about alleged violations of the *Code*. Second, it considered whether, if the Province had the constitutional power, it exercised the power by conferring that jurisdiction on the Commission.

The majority of the Court found that the provincial legislature had no constitutional authority to give the Commission the power to determine questions of aboriginal title or aboriginal rights when dealing with alleged violations of the *Code*. In light of this, Mr. Justice Lambert found it unnecessary to address whether the *Code* granted such power. Mr. Justice Donald concurred with Mr. Justice Lambert on the first issue. However, he also allowed the appeal on the second issue, as he found that the *Code* did not give the Commission

the power to decide the aboriginal rights issues in this case. In dissent, Madam Justice Huddart would have dismissed the appeal and upheld the conclusion of the Supreme Court.

Accordingly, the appeal was allowed. The Court reserved judgement on the remedy, pending further submissions on the remedy from the parties.

Thomas Paul v. Forest Appeals Commission, the Attorney General of British Columbia, and the Ministry of Forests (The Council of Forest Industries, Intervenor) (2001 BCCA 644)
Decision Date: October 30, 2001
Court: Mr. Justice Lambert, Mr. Justice Donald, Madam Justice Huddart

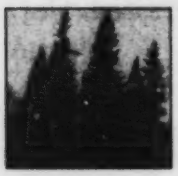
In this decision the Court provided supplementary reasons with respect to the remedy to be granted following its June 14, 2001 judgment allowing Thomas Paul's appeal. The Court issued an order in the nature of certiorari quashing the preliminary ruling of the Commission dated April 24, 1998, in which the Commission found that it had jurisdiction to decide the aboriginal rights issue in the appeal by Mr. Paul.

An order in the nature of prohibition was also issued, prohibiting the Commission from taking jurisdiction to decide any question of aboriginal rights in relation to Mr. Paul's appeal.

A declaration was made that the Commission does not have jurisdiction to decide any question of aboriginal rights or aboriginal title in the course of exercising its functions under the *Code*.

Similarly, a declaration was made that the Legislature of British Columbia does not have the legislative capacity to confer on the Commission any jurisdiction to decide questions of aboriginal rights or aboriginal title in the course of exercising its functions under the *Code*.

Additionally, an order was made that Mr. Paul is entitled to costs against the Commission, with liberty to apply for an order for costs against the Attorney General of British Columbia and the Ministry of Forests.



Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission during the period from January 1, 2001 to December 31, 2001.

A total of ten appeals were filed with the Commission in 2001. Nine of these appeals were filed under the *Code*, and one was filed under the *Forest Act*. By the end of 2001, no appeals had been rejected, none had been withdrawn, none had been abandoned, and four had been heard.

The Commission issued ten decisions in 2001, including one consent order.

This table provides a summary of the appeals filed with this office and their status. Note that hearings held and decisions issued in 2001 do not necessarily reflect the number of appeals filed in 2001. Of the ten decisions issued in 2001, one was in relation to an appeal filed in 1999, seven were in relation to appeals filed in 2000, and two were in relation to appeals filed in 2001.

Appeals filed	
Appeals filed under the *Code*	9
Appeals filed under the *Forest Act*	1
Appeals filed under the *Range Act*	0
Total Appeals filed	**10**
Appeals rejected	**0**
Appeals withdrawn	**0**
Appeals abandoned	**0**
Hearings held	
Oral hearings held	7
Written hearings held	4
Total hearings held	**11**
Decisions issued	
Final decisions	
Under the *Code*	3
Under the *Forest Act*	3
Under the *Range Act*	1
Consent Order (*Forest Act*)	1
Preliminary Applications	
Intervenor	1
Change of Venue	1
Costs	0
Total Decisions issued	**10**

Number of times sections of the *Code* and its regulations were at issue in appeals filed with the Commission during report period

Section of the *Code*		
45	Protection of the Environment	1
47	Soil Conservation: net area to be reforested	1
58	Authority required to construct or modify a road on Crown land	1
64	Road deactivation	2
67	Timber harvesting	5
68	Excavated or bladed trails	1
96	Unauthorized timber harvest operations	4
97	Private land adjacent to Crown land	1
Section of the *Forest Road Regulation* (B.C. Reg. 106/98)		
20	Road deactivation objectives	1
Section of the *Timber Harvesting Practices Regulation* (B.C. Reg. 109/98)		
23	Constraining slash and debris in and around aquatic environments	1
24	Restricted Operation of machinery	1

▲

This table provides an overview of the determinations that were at issue in the appeals filed under the *Code* in 2001.

Number of times sections of the *Forest Act* were at issue in appeals filed with the Commission during report period

Section of the *Forest Act*, R.S.B.C. 1996, c. 157		
78	Disqualification of a small business forest enterprise	1

▲

This table provides an overview of the determinations that were at issue in the appeals filed under the *Forest Act* in 2001.

Parties to Forest Appeals Commission Appeals

Appellant	Number of times filed an appeal
Lloyd Bentley	1
Forest Practices Board	2
Rodney Gilbert	1
Linda Gilbert	1
Bawnie Robinson	1
Marvin Ryan	1
Suncor Energy Inc.	1
Takla Development Corporation	1
Tembec Industries Inc.	1
Valley Tree Services Ltd.	1

Third Party	Number of times given third party status in appeals filed
Chetwynd Forest Industries, a Division of West Fraser Mills Ltd.	1
D & L Enterprises Ltd.	1
Forest Practices Board	4
Zeidler Forest Industries Ltd.	1

Intervenor	Number of times given intervenor status in appeals filed
	0

▲

These tables show the number of times a particular party has been involved in an appeal over the report period. The tables include parties to appeals under both the *Code* and the *Forest Act*. Appeals were filed by both individuals, forest companies, and the Forest Practices Board.

Third party status was granted on seven occasions and there were no applications for intervenor status with respect to appeals filed during the report period. (note: One decision on intervenor status was issued during the report period. The related appeal was filed in the previous report period.)

APPENDIX I

Legislation and Regulations

The legislation contained in this report was up to date at the time of publication. Please be aware that subsequent to this publication, the legislation may have been amended. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 - Administrative Review and Appeals

Definitions

125.1 In this Division:

"review official" means

(a) a person employed in any of the ministries who is designated by name or title to be a review official by the deputy minister of that ministry, or

(b) for a review requested under section 128(2), a person employed in the Ministry of Forests who is designated by name or title to be a review official by the deputy minister of the Ministry of Forests.

Determination not effective until proceedings concluded

126 (1) A determination that may be reviewed under section 127 does not become effective until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.

(2) Despite subsection (1), the chief forester may order that a determination, other than a determination to levy a penalty under section 117(1), 118(4) or (5) or 119, is not stayed or is stayed subject to conditions, on being satisfied that a stay would be contrary to the public interest.

(3) Despite subsection (1), a determination is not stayed if the determination is made

(a) under section 123(1), or

(b) under prescribed sections or for prescribed purposes.

Person subject to a determination may have it reviewed

127 (1) A person who is the subject of a determination under section 82, 95(2), 99(2), 101(2), 102(3), 106(1), 117 to 120 or 123(1) may deliver, to the review official named in the notice of determination, a written request for a review of the determination.

(2) The person must ensure that the request for review complies with the content requirements of the regulations.

(3) The person must deliver the request for review to the review official not later than 3 weeks after the date the notice of determination was given to the person.

(4) Before or after the time limit in subsection (3) expires, the review official may extend it.

(5) A person who does not deliver the request for review within the time specified loses the right to a review.

Forest Practices Board may have determination reviewed

128 (1) The board may request a review of

(a) a determination made under section 82, 95(2) or 117 to 120,

(b) a failure to make a determination under section 82, 95(2) or 117 to 120, and

(c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendment to either of those plans.

(2) To obtain a review of a determination under subsection (1) (a), the board must deliver a request for review to the review official specified in the notice of determination, and to the person who is the subject of the determination, not later than 3 weeks after the date the notice was given to the person who is the subject of the determination.

(3) To obtain a review of a failure to make a determination under subsection (1) (b), the board must deliver a request for review to the review official referred to in paragraph (b) of the definition of "review official" in section 125.1, and to the person who would be subject to the determination, not later than 6 months after the occurrence of the event that would have been the subject of the determination.

(4) To obtain a review of a determination under subsection (1) (c), the board must deliver a request for review to the review official referred to in paragraph (b) of the definition of "review official" in section 125.1, and to the person who is the subject of the determination, not later than the prescribed period after the approval of the plan or amendment was given to the person who is the subject of the determination.

(5) The board must ensure that the request for review complies with the content requirements of the regulations.

(6) A time limit referred to in subsection (2) or (4) may be extended, before or after its expiry, by

(a) the regional manager, for the time limit in subsection (2), and

(b) the deputy minister of the Ministry of Forests, for the time limit in subsection (4).

(7) If the board does not deliver the request for review within the time specified, the board loses the right to a review.

Review

129 (1) A review official who receives a request for review must ensure that the review is conducted by one or more persons who

(a) are employed under the *Public Service*

Act, and

(b) have not made the determination under review, or are not the persons who failed to make a determination, if the review is for that reason, or have not participated in an investigation on which the determination was based.

(2) The reviewer may decide the matter, based on one or more of the following:

(a) the request for review and the ministries' files;

(b) the request for review, the ministries' files and any other communication with persons the reviewer considers necessary to decide the matter, including communicating with the person or board requesting the review and with the person who made or failed to make the determination;

(c) an oral hearing.

(3) After a request for review is delivered under section 127 or 128,

(a) the person who is the subject of the determination, or who would be the subject of a determination, if made,

(b) the board, if, under section 128, the board requested a review, and

(c) the government

must disclose the facts and law on which the person, board and government will rely at the review, if required by the regulations and in accordance with the regulations.

(4) If permitted by, and in accordance with, the regulations, the reviewer may refer to the commission a question of law raised in a review, if there is agreement to the referral by

(a) the person who is the subject of the determination or would be the subject of a determination, if made,

(b) the board, if, under section 128, the board requested the review, and

(c) the government.

(5) The reviewer may make a decision

(a) confirming, varying or rescinding the determination under review,

(b) referring a determination or failure to make a determination back to the person who made it or failed to make it with or without directions, or

(c) making a determination, if the review concerns the failure to make a determination.

(6) The reviewer must give a written decision to the person who is the subject of the determination or, for a review of a failure to make a determination, the person who would be the subject of a determination, if made, and the board within

(a) the prescribed period after the request for review was received by the review official, or

(b) another period agreed to by

(i) the person who is the subject of the determination, or who would be the subject of a determination, if made,

(ii) the board, if, under section 128, the board requested a review, and

(iii) the government.

(7) Despite subsection (6)(a), if the reviewer determines that the request for review does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under subsection (3), the prescribed period under subsection (6)(a) does not begin until a request for review is received that does comply with those

requirements, or the facts and law are dis closed as required under subsection (3).

Determinations that may be appealed

130 (1) Subject to subsection (3), a person who is the subject of a determination referred to in
(a) section 127, or
(b) section 129(5)(c)
may appeal the determination to the commission.

(2) Subject to subsection (3), the board may appeal to the commission
(a) a determination referred to in section 128(1)(a),
(b) a failure to make a determination referred to in section 128(1)(b),
(c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendments to either of those plans, and
(d) any determination for which a review decision has been given under section 129(6).

(3) No appeal may be made under subsection (1) or (2) unless the determination or failure to make a determination has first been reviewed under section 129.

(4) If a determination is varied by the reviewer, the appeal to the commission is from the determination as varied.

(5) If, as a result of a review of a failure to make a determination, the reviewer makes a determination, the appeal to the commission is from the determination made by the reviewer.

Appeal

131 (1) To initiate an appeal under section 130, the person referred to in section 130(1) or the board, no later than 3 weeks after receiving the review decision under section 129(6), must deliver to the commission a notice of appeal and
(a) in the case of a determination referred to in section 130(1)(a) or 130(2)(a), (c) or (d), enclose a copy of the determination, and
(b) in the case of the determination referred to in section 130(1)(b) or (2)(b), enclose a copy of the reviewer's determination.

(2) If the appeal is from a determination as varied under section 129, the person or board bringing the appeal must include a copy of the review decision with the notice of appeal given under subsection (1).

(3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.

(6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and
(a) to the board, if the notice was delivered
(i) by the person who is the subject of the determination, or
(ii) for an appeal of a failure to make

a determination, by the person who would be the subject of a determination, if made,

(b) to the person who is the subject of the determination, if the notice was delivered by the board, or

(c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.

(7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.

(8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

(9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.

(10) The commission, after receiving a notice of appeal, must

(a) promptly give the parties to an appeal a hearing, or

(b) hold a hearing within the prescribed period, if any.

(11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under sub section (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are dis closed as required under subsection (9) or (14).

(12) A party may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under section 129,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(13) The commission may invite or permit a person to take part in a hearing as an intervenor.

(14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required by the regulations and in accordance with the regulations.

(15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Referral of questions of law

131.1 A hearing regarding a question of law referred under section 129 (4) must be conducted in accordance with the regulations.

Order for written submissions

132 (1) The commission or a member of it may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered

under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

138 (1) On an appeal of a determination or of the confirmation, variance or rescission of a determination, the commission may consider the findings of

(a) the person who made the determination that is being appealed, or

(b) the reviewer.

(2) On the appeal, the commission may

(a) confirm, vary or rescind the determination appealed from, or

(b) refer the matter with or without directions back to the person

(i) who made the initial determination, or

(ii) in the case of a determination made under section 129(5)(c), the reviewer who made the determination.

(3) On considering a question of law referred to the commission under section 129(4), the commission may decide the question

of law and the decision is binding

(a) on the reviewer for the purposes of the review in question, and

(b) on the commission for the purposes of an appeal concerning the determination or the failure to make a determination that was subject of the review in question.

(4) The commission may order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Decision of commission

139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.

(2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.

(3) The commission must make a decision within the prescribed period, if any.

Order for compliance

140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9
FOREST APPEALS COMMISSION

Forest Appeals Commission Continued

194 (1) The Forest Appeals Commission is continued.

(1.1) The commission is to hear appeals under

(a) Division 4 of Part 6, and

(b) the *Forest Act* and *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(2) The commission consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council may appoint.

(3) Appointments under subsection (2) may be for a term of up to 3 years.

(4) The Lieutenant Governor in Council may

(a) appoint a person as a temporary member to deal with a matter before the commission, or for a specified period or during specified circumstances,

and

(b) designate a temporary member as chair.

(5) A temporary member has all the powers and may perform all the duties of a member of the commission during the period, under the circumstances or for the purpose of the appointment.

(6) The Lieutenant Governor in Council may determine the remuneration, reimbursement of expenses and other conditions of employment of the members of the commission.

Organization of the commission

195 (1) The chair may organize the commission into panels, each comprised of one or more members.

(2) The members of the commission may sit

(a) as a commission, or

(b) as a panel of the commission

and 2 or more panels may sit at the same time.

(3) If members of the commission sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and

(b) an order, decision or action of the panel is an order, decision or action of the commission.

Application of other sections

196 Sections 191 and 193 apply to the commission.

Mandate of the commission

197 (1) In accordance with the regulations, the commission must

(a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,

(b) provide

(i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act and the regulations are functioning and identify problems that may have arisen under their provisions, and

(ii) the Minister of Forests with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* and the regulations relating to those reviews and appeals are functioning and identify problems that may have arisen under their provisions, and

(c) annually, and at other times it considers appropriate, make recommendations

(i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,

(ii) to the Minister of Forests concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and

(d) perform other functions required by the regulations.

(2) The chair must give to the ministers an annual report concerning the commission's activities.

(3) The ministers must promptly lay the report before the Legislative Assembly.

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

146 (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision of

(a) a district manager or regional manager, under the provisions referred to in section 143(1)(a) and (b),

(b) an employee of the ministry, under section 105(1),

(c) the chief forester, under section 60(2), 68, 70 (1), 77(1)(a) or 112(1), and

(d) the chief forester, by way of a determination under section 66(4)(b) or (5)(b), of the area of Crown land described in that section.

(2) No appeal may be made under subsection (1)(a) and (b) unless the determination, order or decision has first been reviewed under Division (1) of this Part.

(3) If a determination, order or decision referred to in subsection (1)(a) is varied by the person conducting a review under section 145, the appeal to the commission is from the determination, order or decision as varied under that section.

(4) If this Act gives a right of appeal, this Division applies to the appeal.

Notice of appeal

147 (1) If under the provisions referred to in section 146 a determination, order or decision is made, the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision by

(c) serving a notice of appeal on the commission

(i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

(ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after the date the determination, order or decision is served on the person under the provisions referred to in section 146(1)(c) and (d), and

(d) enclosing a copy of the determination, order or decision appealed from.

(2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).

(3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.

(3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the

commission may extend it.

(5) A person who does not serve the notice of appeal within the time required under subsection (1) or (4) loses the right to an appeal.

Appeal

148 (1) The commission, after receiving the notice of appeal, must

(a) promptly hold a hearing, or

(b) hold a hearing within the prescribed period, if any.

(2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).

(3) Only the appellant and the government are parties to the appeal.

(4) The parties may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

148.1 (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in

his or her custody or possession, makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of

(a) the person who made the initial determination, order or decision, and

(b) the person who conducted the review.

(2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

(4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.

(5) After filing the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

149.1 The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.

(2) On request of the appellant or the minister, the commission must provide written reasons for the decision.

(3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

149.2 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.

(3) An appeal from the decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Range Act

Review and appeal

41 (1) A review may be required of a determination, order or decision of

(a) a forest officer under section 34, and under a licence or permit, and

(b) a district manager under sections 31, 32, 34, and 35, and under a licence or permit.

(2) A review of the determination, order and decision referred to in subsection (1)(a) and (b) is to be conducted by the regional manager.

(3) If a review is to be conducted by the regional manager under subsection (2), the regional manager may delegate the power to decide the review to an official in the Ministry of Forests.

(4) Subject to subsection (5), an appeal may be made to the Forest Appeals Commission from a determination, order or decision of a forest officer or district manager under the provisions referred to in subsection (1) but only if the determination, order or decision has first been reviewed.

(5) If a determination, order or decision referred to in subsection (1) is varied by the person conducting a review, the appeal to the Forest Appeals Commission is from the determination, order or decision as varied.

(6) The procedures and powers in respect of reviews and appeals under the *Forest Act* apply to reviews and appeals under this section.

Appeal from section 26 decision

42 (1) Section 41 does not apply to an appeal from a decision of a district manager made under section 26.

(2) The holder of a licence or permit affected by a decision to change boundaries under section 26 may appeal the change to the minister by serving, within 21 days after service of the notice referred to in section 26(2), written notice of the appeal on the district manager who made the decision.

(3) The notice of appeal must include the name and address of the appellant, the reasons in support of the appeal and a copy of the notice of the change being appealed.

(4) The minister, or a person designated in writing by the minister, must promptly

(a) hear the appeal,

(b) confirm, reverse or vary the decision of the district manager, and

(c) provide the appellant with a written decision by delivering a copy to the appellant, or by mailing a copy to the appellant by registered mail to the address of the appellant in the notice of appeal.

Appeal not a stay

43 Unless the minister orders otherwise, a review or an appeal taken under this Act does not operate as a stay or suspend the operation of the determination, order or decision being reviewed or appealed.

APPENDIX II

Administrative Review and Appeal Procedure Regulation

Part 1

DEFINITIONS

Definitions

1 (1) In this regulation:

"appellant" means

(a) for a *Forest Act* appeal, the person that initiates an appeal under section 147(1) of that Act,

(b) for a *Range Act* appeal, the person that initiates an appeal under section 41(4) of that Act, or

(c) for a *Forest Practices Code of British Columbia Act* appeal, the person that initiates an appeal under section 131(1) of that Act, and includes the board if the board initiates an appeal under section 131(1) of that Act;

"requesting person" means a person that requests a review of

(a) a determination, order or decision under the *Forest Act* or *Range Act*, or

(b) a determination under the *Forest Practices Code of British Columbia Act*,

and includes the board if the board requests a review of a determination, or a failure to make a determination, under the *Forest Practices Code of British Columbia Act*;

"reviewer" means

(a) for a review under the *Forest Act*,

(i) the regional manager if the review concerns a determination, order or decision referred to in section 143 (1) (a) or (c) of the *Forest Act*,

(ii) the chief forester if the review concerns a determination, order or decision referred to in section 143 (1) (b) of the *Forest Act*, or

(iii) the person to whom, under section 143 (3) of the *Forest Act*, the regional manager or chief forester delegates the power to decide the review,

(b) for a review under the *Range Act*,

(i) the regional manager if the review concerns a determination, order or decision referred to in section 41 (1) (a) or (b) of the *Range Act*, or

(ii) the person to whom, under section 41 (3) of the *Range Act*, the regional manager delegates the power to decide the review, or

(c) for a review under the *Forest Practices Code of British Columbia Act*, "reviewer" as defined in section 1 (1) of that Act.

(2) For the purposes of Division 4 of Part 6 of the *Forest Practices Code of British Columbia Act* and this regulation, **"ministries"** means the Ministry of Forests, the Ministry of Environment, Lands and Parks and the Ministry of Energy and Mines.

[am. B.C. Reg. 76/2001, Sch. 1, ss. 1 and 2.]

Part 2

ADMINISTRATIVE REVIEW PROCEDURE

Division 1 – Requesting a Review

Review requests by board

2 (1) The board may request a review of a determination under the *Forest Practices Code of British Columbia Act* with respect to approval of a forest development plan, range use plan or amendment to either plan if the board believes that, in relation to the preparation of the plan or amendment, there has been a contravention of that Act or the regulations made under that Act.

(2) The board may request a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to

(a) a forest development plan,

(b) a range use plan, or

(c) an amendment to either plan

if the board believes that, in relation to the preparation of the plan or amendment, there has been a contravention of the *Forest Practices Code of British Columbia Act* or the regulations made under that Act.

(3) The prescribed period for the purposes of section 128 (4) of the *Forest Practices Code of British Columbia Act* is 45 days.

[en. B.C. Reg. 76/2001, Sch. 1, s. 3.]

Request for review: content requirements

3 (1) For

(a) a review of a determination, order or decision referred to in section 143 (1) of the *Forest Act* or section 41 (1) of the *Range Act*,

(b) a review of a determination referred to in section 127 (1) or 128 (1) (a) of the *Forest Practices Code of British Columbia Act*,

(c) a review of a failure to make a determination referred to in section 128 (1) (b) of the *Forest Practices Code of British Columbia Act*, or

(d) a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to a forest development plan, range use plan or amendment to either plan,

the request for review must be signed by, or on behalf of, the requesting person and must contain all of the following information:

(e) the name and address of the requesting person;

(f) the address for service of the requesting person;

(g) the grounds for review;

(h) a statement of the relief requested.

(2) In addition to the requirements of subsection (1), a request made by the board must also include the following information:

(a) for a review of a failure to make a determination, the name of the person whose failure to make a determination is the subject of the request;

(b) for a review of a determination with respect to the approval of a forest

development plan, range use plan or amendment to either plan,

(i) the name of the agreement holder to which the plan or amendment relates, and

(ii) the name of the person who made the determination;

(c) for a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to a forest development plan, range use plan or amendment to either plan, the name of the person who gave effect to the plan or amendment.

[en. B.C. Reg. 76/2001, Sch. 1, s. 4.]

Division 2 – Procedures after Receipt of Request for Review under the *Forest Act* and *Range Act*

Reviews conducted under the *Forest Act* and *Range Act*

4 Sections 5 to 8 apply to requests for reviews under the *Forest Act* and *Range Act*.

Notification of parties following receipt of request for review

5 The reviewer must acknowledge in writing any request for review.

Deficient request for review

6 (1) If a request for review does not comply with section 3, the reviewer may serve a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the reviewer serves a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the reviewer of further material remedying the deficiencies.

(3) The reviewer must serve a copy of the request and any notice of deficiency on the person who made the determination, order or decision that is the subject of the request.

[am. B.C. Reg. 76/2001, Sch. 1. s. 5.]

Notice of review

7 The reviewer must serve a notice of review to the person who requested the review, and to the person referred to in section 6(3), setting out,

(a) in accordance with section 145(1) of the *Forest Act*, the basis on which the review is to be conducted, and

(b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

8 The prescribed period for the purposes of section 145(3)(a) of the *Forest Act* is 60 days.

Division 3 – Procedures after Receipt of Request for Review under the *Forest Practices Code of British Columbia Act*

Reviews conducted under the *Forest Practices Code of British Columbia Act*

9 Sections 10 to 14 apply to request for reviews under the *Forest Practices Code of British Columbia Act*.

Notification of parties following receipt of a request for review

10 (1) The reviewer must acknowledge in writing any request for review.

(2) If a request for review is

(a) made by a requesting person, other than the board, the reviewer must give a copy of the request to

(i) the person who made the determination that is the subject of the request, and

(ii) the board, or

(b) made by the board, the review official must give a copy of the request to the following:

(i) for the review of a failure to make a determination, the person whose failure to make a determination is the subject of the request;

(ii) for a review of a determination with respect to the approval of a forest development plan, range use plan or amendment to either of those plans, the agreement holder to which the plan or amendment relates and the person who made the determination;

(iii) for a review of giving effect, under section 40 of the *Forest Practices Code of British Columbia Act*, to a forest development plan, range use plan or amendment to either plan, the person who gave effect to the plan or amendment.

[am. B.C. Reg. 76/2001, Sch. 1, s. 6.]

Deficient request for review

11 (1) If a request for review does not comply with section 3, the reviewer may give a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the reviewer gives a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the reviewer of further material remedying the deficiencies.

Agreement holder party to review

11.1 If the board has requested a review of a determination under the *Forest Practices Code of British Columbia* with respect to the approval of a forest development plan, range use plan or amendment to either plan, the agreement holder to which the plan or amendment relates is a party to the review.

[en. B.C. Reg. 76/2001, Sch. 1, s. 7.]

Designation of reviewer

12 On receipt of a request for review, the reviewer must designate the reviewer or reviewers and, if more than one, appoint one of them as the chair.

Notice of review

13 The reviewer must give a notice of review to the person who requested the review, and to the persons referred to in section 10(2), setting out,

(a) in accordance with section 129(2) of the *Forest Practices Code of British Columbia Act*, the basis on which the review is to be conducted, and

(b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

14 The prescribed period for the purposes of section 129(6)(a) of the *Forest Practices Code of British Columbia Act* is 60 days.

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Notice of appeal

15 The notice of appeal referred to in section 147 (1) of the *Forest Act* and section 131(1) of the *Forest Practices Code of British Columbia Act*, and the notice of appeal for an appeal under section 41 of the *Range Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

Deficient notice of appeal

16 (1) If a notice of appeal does not comply with section 15, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or *Range Act*, or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Forest Practices Code of British Columbia Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the commission of further material remedying the deficiencies.

Notification of parties following receipt of notice of appeal

17 The commission must acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act* or *Range Act*, serve a copy of the notice of appeal on the deputy minister of the Ministry of Forests, and

(b) in the case of an appeal under the *Forest Practices Code of British Columbia Act*, give a copy of the notice of appeal to the deputy minister of the Ministry of Forests, in addition to the persons referred to in section 131(6) of that Act.

Procedure following receipt of notice of appeal

18 (1) Within 30 days after receipt of the notice of appeal, the commission must

(a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,

(b) designate the panel members if the commission determines that the appeal is to be considered by a panel,

(c) subject to subsections (2) and (3), set

the date, time and location of the hearing, and

(d) give notice of hearing to the parties if the appeal is under the *Forest Practices Code of British Columbia Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act* or *Range Act*.

(2) The prescribed period for the purposes of section 148(1)(b) of the *Forest Act* is 45 days after the commission receives the notice of appeal.

(3) Despite subsection (2), the parties and the commission may agree to a period other than 45 days.

Panel chair determined

19 For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:

(a) if the chair of the commission is on the panel, he or she is the panel chair;

(b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

20 (1) If the board is added as a party to an appeal under section 131(7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131(8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

21 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131(13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal written notice

(a) stating that the intervenor has been invited or permitted under section 131(13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to take part.

Transcripts

22 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for appeal decision under the *Forest Act*

23 The prescribed period for the purposes of section 149.1(3) of the *Forest Act* is 42 days after conclusion of the hearing.

[am. B.C. Reg. 76/2001, Sch. 1, s. 8.]

Part 4

ANNUAL REPORT OF THE FOREST APPEALS COMMISSION

Content

24 (1) By April 30 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197(2) of the *Forest Practices Code of British Columbia Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated during the year,

(b) the number of appeals completed during the year,

(c) the resources used in hearing the appeals,

(d) a summary of the results of the appeals completed during the year,

(e) the annual evaluation referred to in section 197(1)(b) of the *Forest Practices Code of British Columbia Act*, and

(f) any recommendations referred to in section 197(1)(c) of the *Forest Practices Code of British Columbia Act*.

[am. B.C. Reg. 76/2001, Sch. 1, s. 9.]

Part 5

TRANSITION

Administrative appeals

25 If, before June 15, 1995, a person contravenes a section of the *Forest Act* or *Range Act* that is repealed and replaced by a provision of the *Forest Practices Code of British Columbia Act*, and at the date of the contravention the *Forest Act* or *Range Act* provided a right of appeal in respect of contraventions of that section, the person may appeal a determination that they contravened the section and the appeal provisions of the *Forest Act* or *Range Act* that are in effect at the date of the determination apply to the appeal.